

October 6, 2017

Mathew Perkinson,  
Supervisor, Transportation Safety  
Utilities and Transportation Commission  
1300 S. Evergreen Park Dr., S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

RE: Railroad Crew Transportation Rulemaking; Docket# TR-170780

Dear Mr. Perkinson:

Thank you for organizing and moderating the RR Crew Transportation Rulemaking Workshop on October 5, 2017. I was very impressed by the level of agency participation that included all three UTC commissioners, an administrative law judge, a House Transportation staff lawyer, and several top-ranking UTC department heads. I think this speaks volumes to the overall "commitment to safety" everyone associated with ESHB 1105 has and continues to demonstrate. With that, I do have a few follow-up comments for the workshop rulemaking process I would like added to the docket record.

First, I want to reiterate my verbal comments provided at the workshop hearing as to the need for "route specific" familiarization being incorporated into driver training requirements. I spoke of one of my own personal railroad crew transportation experiences involving a contract crew transportation driver dispatched from an adjacent state (Idaho). That driver was called to pick-up our out-of-town train crews in Ellensburg and transport everyone to railroad terminals in western Washington (Balmer Yard and Tacoma Yard). This scenario was set in motion because the usual, local Ellensburg driver was unavailable (laid off, day off, etc.). When the Idaho driver finally arrived a few hours after we were all on-duty, it was evident she was not familiar with the local area or with the ingress/egress to the railroad facilities at Ellensburg and, later, with the interstate freeways, roads, and streets in and around Seattle and Tacoma (or with rush hour traffic in Western Washington). I recall the conditions for that "deadhead" trip was daylight with clear, dry roads. However, oftentimes RR crew transportation events occur at night, during inclement weather, and in adverse road conditions. During the trip, I recall the crews had to tell the driver where to go, where to turn, and how to get to the destination railroad terminals in the Seattle and Tacoma areas. While the trip was uneventful regarding a traffic collision or wreck, it is the type scenario that places railroad crews into a higher risk category when deadheading by "rubber tire." As such, some type of driver route familiarization component should be mandated for both entry-level and refresher training programs. As one of the labor stakeholders at the workshop Thursday afternoon mentioned, training needs to encompass more than having a driver watch a video. Drivers should be required to have actually gone out to the various

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locations, seen firsthand the railroad facilities, access roads, railroad crossings at-grade, and other localized hazards associated with the railroad they are likely to encounter in day and night conditions when performing service.

Additionally, to the extent possible, the railroads themselves should ultimately be the ones obligated to ensure the contractors they hire maintain the level of safety standards now required under ESHB 1105 (and existing federal and state laws). If either the contractor or the railroad fails in this obligation, it should be the railroad company ultimately held financially accountable. Railroad workers are employees of the railroad companies and, as such, perform services at the railroad's behest. Railroad employees have no real choice in deciding what contract vendor is selected by the railroad for crew transportation services or, when working, what the skillset of the driver who shows up is or the mechanical worthiness of the vehicle they are required to ride in. If railroad employees refuse transportation, a disciplinary "Sword of Damocles", up to and including termination, hangs above their heads.

It is important to remember the reason we are here discussing rulemaking is because the safety standards associated with contract railroad crew transportation had deteriorated to the point legislative action was required. In my opinion, the downward trend can be attributed, in part, to railroad industry outsourcing of crew transportation services circa the mid-1980's. On March 23, 2011, one of the worse crew transportation tragedies I can recall occurred near Kelso, WA. At that time, I was the Chairman of the BLET Washington State Legislative Board and remember receiving the phone call that "something very bad" had happened. The tragedy near Kelso, WA killed railroad workers Thomas J. Kenny and Christopher J. Leohr, and driver Steven Sabastian. A third railroad employee, Dwight Hauck, was left permanently disabled. The crew vehicle they were in was struck broadside by a loaded grain train on the railroad's private crossing at-grade that provides access to the railroad yard office. The collision was avoidable and "after the fact" actions by the railroad (installing crossing light & gates), while absolutely warranted, were too little, too late. There is no way to ever reverse the loss of life, infliction of debilitating injury, or remove the emotional scars forever left on the victim's family, friends, and co-workers. Both the railroads and the contract crew transportation companies operating here and in other states need to do a lot more to ensure for safety in crew transportation operations. I agree railroad crew transportation regulations should be standardized state-to-state – as long as Washington state law and regulation is the standard.

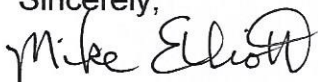
As another labor stakeholder pointed out during the workshop discussion, most every railroad terminal he had worked at during the early years of his career had their own "in-house" drivers, i.e., railroad clerks. Clerks routinely worked the same railroad terminals, learned the various crew transportation routes, knew their way around the area railroad yards, tracks, crossings at-grade, crew change points, streets, freeways, and the roads accessing the railroad right-of-way. They were competent crew transportation drivers, in

part, because it was their daily job and career. Fast forward twenty-five years and the safety standard commensurate with railroad clerk drivers has been outsourced to whomever the “contractor of the day” happens to be at the time. Career railroad crew transportation drivers have all but disappeared and, in many cases, have been replaced by what amounts to temporary drivers, often working more than one job, who seldom stay on as crew drivers for more than a few weeks or months. The railroad’s decision to outsource crew transportation is a contributing factor in the deterioration of safety and, as such, they are linked to injuries and deaths of railroad workers and crew vehicle drivers. Further, the outsourcing decision has placed the public at higher risk as they too are exposed to the revolving door of marginally trained drivers and minimally inspected vehicles.

To educate the commission as to the motivation behind the railroad’s outsourcing of crew transportation, I have included a public document (**Lorraine Kenny vs. BNSF Railway Company, et al**) associated with the March 23, 2011 crew transportation tragedy referenced above. This document sheds light on at least one reason the railroad industry outsources contract crew transportation services. Namely, as an attempt to avoid financial responsibility under the Federal Employer’s Liability Act. The other obvious reason for outsourcing railroad crew transportation services is to save money. The railroads have and continue to profit handsomely. They can afford to provide their employees with safe crew transportation services but have chosen otherwise.

Again, “Thank You” for this opportunity to provide input at the workshop and for allowing a continuing dialog on this subject matter. While the most glaring loopholes in existing state law appear to have been closed with ESHB 1105, the UTC rulemaking is an equally important process for ensuring future legal maneuvering by industry that undermines the intent of the law is avoided. As a final thought, I have included a picture taken at the state capital on May 16, 2017 – the day Governor Jay Inslee signed ESHB 1105. Present in the picture are the widow Lorraine Kenny, Mr. and Mrs. Hauck, legislators from both sides of the political aisle who worked on and supported the bill, the rail labor leaders, and several railroad workers, family members, and friends. But not present are Thomas J. Kenny, Christopher J. Leohr, and Steven Sebastian. Consider that as you contemplate what rules governing railroad crew transportation operations are fair, reasonable, and just.

Sincerely,



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